

MARIO ALBERTO REYES,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

and Effective Death Penalty Act provides as follows:

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255(f).

Petitioner contends that he is entitled to sentencing relief based on the Supreme Court's opinion in Johnson v. United States, 135 S. Ct. 2551 (2015). Because Petitioner has not previously filed a motion to vacate, the Court will provide him with 21 days from entry of this Order to include any additional claims for relief and an opportunity to explain why any new claims are timely under any of the provisions of Section 2255(f) or why he should be entitled to equitable tolling of the one-year limitation period.

IT IS, THEREFORE, ORDERED that:

1. Petitioner shall file notice within 21 days from entry of this Order explaining whether he agrees to have his motion for relief from sentence considered on the merits under 28 U.S.C. § 2255. If Petitioner does not agree then this civil action will be closed and the § 2255 motion to vacate dismissed without prejudice.

2. If Petitioner agrees to have his claim considered on the merits in a § 2255 motion to vacate then he may present any additional challenges to his criminal judgment within 21 days from entry of this Order, and explain why the claims should be considered timely under Section 2255(f); or why he should be entitled to equitable tolling of the one-year limitation period.

SO ORDERED.

Signed: September 14, 2016

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

